

# **Exhibit C**

**In The Matter Of:**

***MERCK & CO., INC., SECURITIES, DERIVATIVE & "ERISA"  
LITIGATION***

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***DAVID I. TABAK - Vol. 1***  
***July 12, 2012***

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DAVID I. TABAK - 7/12/2012

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| <p>UNITED STATES DISTRICT COURT<br/>DISTRICT OF NEW JERSEY<br/>-----X<br/>IN RE MERCK &amp; CO., INC., SECURITIES,<br/>DERIVATIVE &amp; "ERISA" LITIGATION</p> <p>MDL No. 1658 (SRC)</p> <p>-----X</p> <p>THIS DOCUMENT RELATES TO: THE<br/>CONSOLIDATED SECURITIES ACTION<br/>Case No. 3:05-CV-01151-SRC-MF<br/>Case No. 3:05-CV-02367-SRC-MF</p> <p>-----X</p> <p>July 12, 2012<br/>9:36 a.m.</p> <p>Videotaped deposition of DAVID I. TABAK,<br/>pursuant to notice, at the offices of Cravath,<br/>Swaine &amp; Moore LLP, Worldwide Plaza, 825 Eighth<br/>Avenue, New York, New York, before Eric J. Finz,<br/>a Shorthand Reporter and Notary Public within<br/>and for the State of New York.</p>   | <p>1<br/>2 A P P E A R A N C E S: (Continued)<br/>3 CRAVATH, SWAINE &amp; MOORE LLP<br/>Attorneys for all Defendants excluding Dr.<br/>4 Edward Scolnick<br/>Worldwide Plaza<br/>5 825 Eighth Avenue<br/>New York, NY</p> <p>6<br/>7 BY: CHRISTOPHER BELELIEU, ESQ.<br/>(cbelelieu@cravath.com)<br/>KARIN A. DeMASI, ESQ.<br/>8 (kdemasi@cravath.com)<br/>-and-<br/>9 MATTHEW BOGGESE, ESQ.<br/>(mboggess@cravath.com)</p> <p>10<br/>11<br/>12 SCHULTE ROTH &amp; ZABEL LLP<br/>Attorneys for Defendant Dr. Edward Scolnick<br/>919 Third Avenue<br/>13 New York, NY 10022<br/>14 BY: WILLIAM H. GUSSMAN, JR., ESQ.<br/>(bill.gussman@srz.com)</p> <p>15<br/>16<br/>17 ALSO PRESENT:<br/>18 IRIS JIANG, Cornerstone Research<br/>19<br/>20 MICHAEL MARCO, Summer Associate<br/>21<br/>22 WILLIAM PACE, Videographer<br/>23 Merrill Legal Solutions<br/>24<br/>25</p>   |
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| <p>1<br/>2 A P P E A R A N C E S:<br/>3 BERNSTEIN LITOWITZ BERGER &amp; GROSSMANN LLP<br/>Co-Lead Counsel for Plaintiffs<br/>4 1285 Avenue of the Americas<br/>New York, NY 10019</p> <p>5<br/>6 BY: SALVATORE J. GRAZIANO, ESQ.<br/>(sgraziano@blbglaw.com)<br/>WILLIAM C. FREDERICKS, ESQ.<br/>7 (wfredericks@blbglaw.com)<br/>-and-<br/>8 ADAM H. WIERZBOWSKI, ESQ.<br/>(awierzowski@blbglaw.com)</p> <p>9<br/>10<br/>11 STULL, STULL &amp; BRODY<br/>Co-Lead Counsel for Plaintiffs<br/>6 East 45th Street, 5th Floor<br/>12 New York, NY 10017<br/>13 BY: PATRICK K. SLYNE, ESQ.<br/>(pkslyne@ssbny.com)<br/>14 -and-<br/>MARK LEVINE, ESQ. (p.m. only)</p> <p>15<br/>16<br/>17 BROWER PIVEN<br/>Co-Lead Counsel for Plaintiffs<br/>488 Madison Avenue, 8th Floor<br/>18 New York, NY 10022<br/>19 BY: BRIAN C. KERR, ESQ.<br/>(kerr@brownpiven.com)</p> <p>20<br/>21<br/>22<br/>23<br/>24<br/>25</p> | <p>1 DAVID I. TABAK<br/>2 THE VIDEOGRAPHER: This is the<br/>3 video operator speaking, William<br/>4 Pace for Merrill Legal Solutions,<br/>5 225 Varick Street, New York, New<br/>6 York. Today is July 12, 2012, and<br/>7 the time is 9:36 a.m.<br/>8 We are at the offices of<br/>9 Cravath Swaine &amp; Moore LLP, 825<br/>10 Eighth Avenue, New York, New York,<br/>11 to take the videotaped deposition<br/>12 of David Tabak, in the matter of in<br/>13 re Merck &amp; Company, Incorporated<br/>14 Securities, Derivative and ERISA<br/>15 litigation, in the United States<br/>16 District Court, District of New<br/>17 Jersey, MDL No. 1658.<br/>18 Counsel please introduce<br/>19 yourselves and state whom you<br/>20 represent.<br/>21 MR. BELELIEU: Christopher<br/>22 Belelieu, Cravath Swaine &amp; Moore,<br/>23 for Merck and several individual<br/>24 defendants.<br/>25 MR. BOGGESE: Matt Boggess,</p> |

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|----------|--|----------|--|
| 10:57:03 | 1 DAVID I. TABAK                             | 10:59:22 | 1 DAVID I. TABAK                             |
| 10:57:06 | 2 and the work that my staff performs.       | 10:59:23 | 2 pulling certain data.                      |
| 10:57:11 | 3 Q. What is your hourly rate of             | 10:59:27 | 3 Q. Do all of the people you've             |
| 10:57:14 | 4 compensation related to this matter?       | 10:59:28 | 4 just mentioned work at NERA?               |
| 10:57:17 | 5 A. It's \$690.                             | 10:59:32 | 5 A. They either do or did work at           |
| 10:57:19 | 6 Q. Is that standard for you in             | 10:59:35 | 6 NERA.                                      |
| 10:57:21 | 7 litigation support services?               | 10:59:37 | 7 Q. And can you tell me what the            |
| 10:57:23 | 8 A. In 2012, yes.                           | 10:59:39 | 8 positions are of the people you            |
| 10:57:30 | 9 Q. So your hourly rate changes on          | 10:59:40 | 9 mentioned?                                 |
| 10:57:31 | 10 an annual basis; is that correct?         | 10:59:44 | 10 A. Sure. Ronald Miller is a vice          |
| 10:57:35 | 11 A. It can. I think it actually            | 10:59:47 | 11 president. Stefan Boettrich is a          |
| 10:57:37 | 12 has changed every year. But we review     | 10:59:50 | 12 consultant. And all of the others are or  |
| 10:57:38 | 13 the rates annually.                       | 10:59:54 | 13 were members of our research staff.       |
| 10:57:40 | 14 Q. And is that the same hourly            | 10:59:56 | 14 Q. And what does a consultant do          |
| 10:57:42 | 15 rate that you're paid for nonlitigation   | 10:59:57 | 15 in NERA?                                  |
| 10:57:43 | 16 consulting services?                      | 11:00:00 | 16 MR. GRAZIANO: Objection.                  |
| 10:57:45 | 17 A. It's the same rate that NERA           | 11:00:00 | 17 THE WITNESS: Asked and                    |
| 10:57:47 | 18 is paid for my work on nonlitigation      | 11:00:01 | 18 answered?                                 |
| 10:57:51 | 19 consulting services. The exception of a   | 11:00:01 | 19 MR. GRAZIANO: Yeah.                       |
| 10:57:54 | 20 fixed fee project where we don't bill by  | 11:00:03 | 20 A. As I said, they tend to work           |
| 10:57:55 | 21 the hour.                                 | 11:00:05 | 21 on a project under the direction of more  |
| 10:57:56 | 22 Q. Have plaintiffs' counsel paid          | 11:00:11 | 22 senior people.                            |
| 10:57:57 | 23 you anything to date?                     | 11:00:15 | 23 Q. So are any of these people in          |
| 10:58:00 | 24 A. I believe they paid NERA to            | 11:00:17 | 24 charge of the day-to-day assignments      |
|          | 25 date.                                     |          | 25 related to this case?                     |
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| 10:58:01 | 1 DAVID I. TABAK                             | 11:00:21 | 1 DAVID I. TABAK                             |
| 10:58:02 | 2 Q. And do you know how much                | 11:00:25 | 2 A. Ronald Miller and I may have            |
| 10:58:05 | 3 they've paid NERA to date related to this  | 11:00:27 | 3 split various of the day-to-day            |
| 10:58:05 | 4 case?                                      | 11:00:31 | 4 supervision. I gave broad direction, and   |
| 10:58:07 | 5 A. I don't recall.                         | 11:00:33 | 5 then the research staff sometimes          |
| 10:58:10 | 6 Q. Do you have people assisting            | 11:00:35 | 6 reported directly to me, sometimes would   |
| 10:58:13 | 7 you in this case?                          | 11:00:37 | 7 check in with him or he would keep track   |
| 10:58:14 | 8 A. I do.                                   | 11:00:39 | 8 or monitor their day-to-day work.          |
| 10:58:16 | 9 Q. And how many people are                 | 11:00:40 | 9 Q. Do you know how many hours              |
| 10:58:17 | 10 assisting you?                            | 11:00:42 | 10 you've worked on this case to date?       |
| 10:58:24 | 11 A. There probably would have been         | 11:00:43 | 11 A. I do not.                              |
| 10:58:27 | 12 maybe half a dozen at various points in   | 11:00:45 | 12 Q. Can you give an estimate?              |
| 10:58:27 | 13 time.                                     | 11:00:50 | 13 A. I really don't have a good             |
| 10:58:28 | 14 Q. Can you tell me who those              | 11:00:51 | 14 feel for it.                              |
| 10:58:29 | 15 people are?                               | 11:00:53 | 15 Q. I mean, have you worked five           |
| 10:58:35 | 16 A. Sure. Shirim Hashim,                   | 11:00:55 | 16 hours, have you worked a hundred hours?   |
| 10:58:38 | 17 S-h-i-r-i-m, last name H-a-s-h-i-m.       | 11:00:57 | 17 A. Definitely more than five.             |
| 10:58:44 | 18 Margarita Capi, last name C-a-p-i. Eric   | 11:01:00 | 18 Almost certainly more than a hundred.     |
| 10:58:54 | 19 Lin. Stefan Boettrich,                    | 11:01:02 | 19 Q. Do you keep track of the hours         |
| 10:59:03 | 20 B-o-e-t-t-r-i-c-h. Ronald Miller. Rex     | 11:01:04 | 20 that you've worked?                       |
| 10:59:09 | 21 Lam, L-a-m. Shadman Torofder,             | 11:01:05 | 21 A. We have a time system that             |
| 10:59:15 | 22 S-h-a-d-m-a-n, T-o-r-o-f-d-e-r.           | 11:01:07 | 22 does.                                     |
| 10:59:17 | 23 I believe that's it, putting              | 11:01:10 | 23 Q. So somewhere in NERA that              |
| 10:59:20 | 24 aside for example library staff or others | 11:01:11 | 24 information, you keep that information as |
|          | 25 who may have just been involved in        |          | 25 to how many hours you've worked on this   |

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|----------|---|----------|--|
| 11:01:14 | 1 DAVID I. TABAK                        | 11:26:11 | 1 material that's quoted.                    |
| 11:01:14 | 2 case?                                 | 11:26:12 | 2 Q. So the support staff you                |
| 11:01:14 | 3 A. Yes.                               | 11:26:14 | 3 mentioned earlier that's working on this   |
| 11:01:20 | 4 Q. Have you been retained by          | 11:26:15 | 4 case with you from NERA, they didn't       |
| 11:01:24 | 5 counsel, by plaintiffs' counsel for   | 11:26:17 | 5 draft any of this report; is that          |
| 11:01:26 | 6 anything other than your declaration  | 11:26:19 | 6 correct?                                   |
| 11:01:26 | 7 related to their motion for class     | 11:26:19 | 7 A. They worked on the exhibits             |
| 11:01:28 | 8 certification?                        | 11:26:21 | 8 and they, you know, created initial        |
| 11:01:28 | 9 MR. GRAZIANO: I'm just going          | 11:26:24 | 9 exhibits, I may have edited for style.     |
| 11:01:29 | 10 to object as beyond the scope of     | 11:26:27 | 10 But I think they basically did the drafts |
| 11:01:31 | 11 the deposition. Also, if you could   | 11:26:29 | 11 on that. Otherwise they reviewed my       |
| 11:01:34 | 12 let me know when it's a good time    | 11:26:31 | 12 work, they checked the numbers on there,  |
| 11:01:36 | 13 to take a break.                     | 11:26:33 | 13 and they may have suggested some spelling |
| 11:01:37 | 14 MR. BELELIEU: We'll just             | 11:26:36 | 14 or grammatical issues or maybe clarity    |
| 11:01:38 | 15 finish this line of questioning.     | 11:26:39 | 15 issues. But it's basically mine.          |
| 11:01:39 | 16 MR. GRAZIANO: You can say yes        | 11:26:41 | 16 Q. Were there any drafts of this          |
| 11:01:40 | 17 or no.                               | 11:26:42 | 17 report?                                   |
| 11:01:40 | 18 MR. BELELIEU: It's a yes or          | 11:26:43 | 18 A. Yes.                                   |
| 11:01:41 | 19 no answer.                           | 11:26:43 | 19 Q. And did you write all of those         |
| 11:01:42 | 20 A. Yes. Although it's just one       | 11:26:44 | 20 drafts?                                   |
| 11:01:44 | 21 retention.                           | 11:26:45 | 21 A. I did.                                 |
| 11:01:47 | 22 Q. And is your compensation          | 11:26:45 | 22 Q. How many drafts of this report         |
| 11:01:48 | 23 contingent upon a ruling in favor of | 11:26:47 | 23 did you go through?                       |
| 11:01:51 | 24 plaintiffs on their motion for class | 11:26:48 | 24 A. Well, electronically it's hard         |
| 11:01:52 | 25 certification?                       |          |  |
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| 11:01:53 | 1 DAVID I. TABAK                        | 11:26:51 | 1 to say what's a draft. I open it up,       |
| 11:01:56 | 2 A. Neither mine nor NERA's            | 11:26:54 | 2 change a word, is it another draft? I      |
| 11:01:59 | 3 compensation is contingent on that.   | 11:26:56 | 3 don't know how to answer that really.      |
| 11:02:02 | 4 Q. Well, is NERA being paid for       | 11:26:57 | 4 Q. Okay. We can be literal about           |
| 11:02:02 | 5 your testimony today?                 | 11:27:01 | 5 it. How many times did you make changes    |
| 11:02:04 | 6 A. NERA is being paid for my time     | 11:27:02 | 6 to a draft of this report?                 |
| 11:02:04 | 7 here today. Or I assume will be. We   | 11:27:06 | 7 A. Many. Often I'd open it up              |
| 11:02:10 | 8 haven't been paid for that yet.       | 11:27:09 | 8 and change a word or two when I read a     |
| 11:02:11 | 9 MR. BELELIEU: Let's take a            | 11:27:11 | 9 sentence and it wasn't clear.              |
| 11:02:12 | 10 break.                               | 11:27:13 | 10 Q. So can you give me an estimate         |
| 11:02:12 | 11 THE VIDEOGRAPHER: Going off          | 11:27:15 | 11 of how many times you did that?           |
| 11:02:13 | 12 the record at 11:02 a.m.             | 11:27:16 | 12 A. Dozens. And also writing the           |
| 11:02:16 | 13 (A recess was taken.)                | 11:27:19 | 13 first draft, it wasn't in one sitting.    |
| 11:25:44 | 14 THE VIDEOGRAPHER: Returning          | 11:27:22 | 14 Q. Well, when did you start               |
| 11:25:50 | 15 to the record at 11:25, and this     | 11:27:23 | 15 drafting this report?                     |
| 11:25:53 | 16 will mark the beginning of tape      | 11:27:24 | 16 A. Probably in January '12 I put          |
| 11:25:54 | 17 No. 2.                               | 11:27:31 | 17 together an outline of the report. So I   |
| 11:25:56 | 18 BY MR. BELELIEU:                     | 11:27:34 | 18 would have put in things like the scope   |
| 11:25:57 | 19 Q. You understand you're still       | 11:27:35 | 19 of the analysis and summary of findings,  |
| 11:25:58 | 20 under oath; correct?                 | 11:27:39 | 20 without the actual findings, obviously,   |
| 11:25:59 | 21 A. I do.                             | 11:27:41 | 21 but just a place, for example, I'd say my |
| 11:26:00 | 22 Q. I want to turn back to your       | 11:27:44 | 22 findings are as follows, and leave a      |
| 11:26:03 | 23 declaration now. Who wrote your      | 11:27:47 | 23 blank. Qualifications and remuneration    |
| 11:26:09 | 24 declaration?                         | 11:27:49 | 24 would have been there. Theory of market   |
| 11:26:09 | 25 A. I wrote all of it other than      |          |  |

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|----------|--|----------|---|
| 11:27:51 | 1 DAVID I. TABAK                             | 11:29:53 | 1   |
| 11:27:55 | 2 efficiency, I think I actually wrote that  | 11:29:55 | 2 would be before my staff and I analyzed   |
| 11:27:58 | 3 after the first draft.                     | 11:29:55 | 3 the data.                                 |
| 11:27:59 | 4 But then like section 5, test              | 11:29:56 | 4 Q. Right. But I believe you told          |
| 11:28:02 | 5 for market efficiency, I wrote the         | 11:29:58 | 5 me that your staff conducted the          |
| 11:28:04 | 6 general outline. In fact I think I wrote   | 11:30:00 | 6 underlying analyses. I'm asking you did   |
| 11:28:06 | 7 a lot of this report just leaving blanks   | 11:30:02 | 7 you conduct any of your own underlying    |
| 11:28:08 | 8 for what the actual outcome of analysis    | 11:30:05 | 8 analyses related to this report?          |
| 11:28:10 | 9 was and the interpretation. But in terms   | 11:30:08 | 9 A. Oh, well, I often reviewed             |
| 11:28:14 | 10 of writing, what I would do, I'd often    | 11:30:10 | 10 what my staff did and sometimes would    |
| 11:28:15 | 11 fill that in at the same time as my       | 11:30:12 | 11 replicate it myself. I took a look at    |
| 11:28:18 | 12 people were starting to do the work.      | 11:30:15 | 12 the data. I did some research in the     |
| 11:28:22 | 13 Q. So you assigned certain                | 11:30:19 | 13 academic literature myself to see if I   |
| 11:28:27 | 14 sections or portions of the work for this | 11:30:23 | 14 could find academic sources that either  |
| 11:28:28 | 15 report to your staff; is that correct?    | 11:30:25 | 15 supported or contradicted what I wanted  |
| 11:28:29 | 16 A. When you say of the report,            | 11:30:25 | 16 to say.                                  |
| 11:28:31 | 17 not the text of the report, but doing the | 11:30:27 | 17 Q. Do you recall what academic           |
| 11:28:32 | 18 underlying analyses.                      | 11:30:28 | 18 sources you reviewed?                    |
| 11:28:42 | 19 Q. Okay. And did you provide any          | 11:30:30 | 19 A. Those cited over here, for            |
| 11:28:44 | 20 drafts of your report as you were going   | 11:30:34 | 20 example. There is one on the use of      |
| 11:28:46 | 21 through it to plaintiffs' counsel?        | 11:30:38 | 21 All-Star analysts that I actually cite   |
| 11:28:47 | 22 MR. GRAZIANO: Just object.                | 11:30:39 | 22 again, I believe, for the proposition    |
| 11:28:48 | 23 It's a yes or no question.                | 11:30:42 | 23 that traders in the option markets tend  |
| 11:28:49 | 24 A. Yes.                                   | 11:30:44 | 24 to be more sophisticated than traders in |
|          | 25 Q. And again, how many drafts             |          | 25 the stock market.                        |
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| 11:28:53 | 1 DAVID I. TABAK                             | 11:30:46 | 1   |
| 11:28:55 | 2 would you have provided to plaintiffs'     | 11:30:48 | 2 Q. And of the underlying analyses         |
| 11:28:57 | 3 counsel?                                   | 11:30:50 | 3 that your staff did, which underlying     |
| 11:29:01 | 4 A. Maybe three.                            | 11:30:53 | 4 analyses did you actually review?         |
| 11:29:02 | 5 Q. I believe you testified                 | 11:30:55 | 5 A. It depends what you mean by            |
| 11:29:07 | 6 earlier that you said you spent, tell me   | 11:30:57 | 6 review. I looked obviously at the output  |
| 11:29:09 | 7 if I'm wrong, over a hundred hours on      | 11:31:00 | 7 for all of them. I also tended to go      |
| 11:29:12 | 8 this report. Is that correct?              | 11:31:02 | 8 through the files. If you want I can go   |
| 11:29:14 | 9 A. I believe that figure is                | 11:31:03 | 9 through the exhibits and tell you what I  |
| 11:29:15 | 10 correct.                                  | 11:31:04 | 10 looked at.                               |
| 11:29:17 | 11 Q. So out of those hundred hours          | 11:31:08 | 11 Q. Sure.                                 |
| 11:29:19 | 12 or hundred plus hours, how much time did  | 11:31:12 | 12 A. Okay. So Exhibit 3 is an              |
| 11:29:23 | 13 you spend actually drafting the report?   | 11:31:16 | 13 analysis of the average weekly trading   |
| 11:29:28 | 14 A. I don't know. I don't think            | 11:31:19 | 14 volume. And I definitely looked at that  |
| 11:29:32 | 15 it necessarily would have been that much. | 11:31:24 | 15 file and actually checked the results.   |
| 11:29:34 | 16 I write reasonably quickly.               | 11:31:25 | 16 Straightforward enough.                  |
| 11:29:36 | 17 Q. So again, can you give me an           | 11:31:29 | 17 Exhibit 4-A, discusses the               |
| 11:29:36 | 18 estimate?                                 | 11:31:32 | 18 analysts contributing to I/B/E/S, all    |
| 11:29:38 | 19 A. I really can't. I just don't           | 11:31:39 | 19 caps I/-B/-E/-S, to the I/B/E/S          |
| 11:29:39 | 20 know.                                     | 11:31:40 | 20 consensus earnings estimates. And I      |
| 11:29:41 | 21 Q. Well, did you conduct any              | 11:31:43 | 21 looked at I believe the raw file from    |
| 11:29:43 | 22 research related to this report?          | 11:31:47 | 22 I/B/E/S. And certainly I looked a lot at |
| 11:29:48 | 23 A. When you say research, all of          | 11:31:49 | 23 column 3 to see how to properly describe |
| 11:29:51 | 24 the analyses there are based on data.     |          | 24 the results.                             |
|          | 25 It's not as if I knew what the answers    | 11:31:51 | 25 Exhibit 4-B talks about the              |

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